

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 and Part 90)
of the Commission's Rules to)
Facilitate Future Development)
of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF CENTURY TELEPHONE ENTERPRISES, INC.

Century Telephone Enterprises, Inc. (Century), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, hereby submits its reply comments in the above-captioned proceeding.

I. Statement of Interest.

Century is a publicly traded company which owns and operates 38 rural and suburban telephone companies. Together, they provide local exchange telephone service to more than 500,000 access lines in 14 states in the southeastern, midwestern, and southwestern United States. In addition, some of Century's rural telephone companies hold licenses in the Rural Radiotelephone Service in order to provide Basic Exchange Telecommunications Radio System (BETRS) service to subscribers at locations where local exchange telephone service cannot feasibly be provided,

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e.g., because rugged terrain makes it impracticable to string open wire or bury cable.

The Commission has announced that it will auction, on a geographic basis, the two-way VHF and UHF frequencies currently allocated to BETRS on a co-primary basis with the Paging and Radiotelephone Service. If implemented, Century and its rural subscribers will be adversely affected by this geographic area licensing scheme. It will be impracticable, if not impossible, for Century to license additional BETRS facilities or make necessary modifications to existing BETRS facilities in order to meet future demands for local exchange telephone service at locations where landline facilities cannot feasibly be constructed. This will significantly compromise the Congressionally mandated universal service goal.

The future demand for local exchange service via BETRS is not based on speculation or supposition. Thus, Century will be applying for additional BETRS facilities in order to satisfy the demand for service in these otherwise high-cost areas. However, the Commission's auction rules, which impose secondary licensing for every future site-by-site BETRS facility,¹ pose a significant threat to Century's

¹ As of May 12, 1997, the effective date of the Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18 and PP Docket No. 93-253, 62 Fed. Reg. 11616 (March 12, 1997), grants of additional site-by-site BETRS facilities will be secondary to the geographic area licensee.

ability to continue to meet the demand for local exchange telephone service.

II. The Commission Should Adopt Mandatory Partitioning for BETRS.

Century has reviewed the comments filed in response to the captioned Further Notice of Proposed Rulemaking (FNPRM), and fully supports the comments of Nucla-Naturita Telephone Company (NNTC). One alternative offered by NNTC, namely mandatory partitioning, will safeguard the ability of rural telephone companies to provide necessary local exchange telephone service via radio, in accordance with the universal service mandate of Section 1 of the Communications Act of 1934, as amended (the Act). See e.g. Telocator of America, 691 F. 2d 525, 537 (D.C. Cir. 1982).² In addition, Century believes that NNTC's proposal that the Commission

² To require a rural telephone company or even a consortium of rural telephone companies to bid on BETRS spectrum in a market the size of an Economic Area (EA) is impracticable. Comments of NNTC at 3, n. 3. Unlike paging which requires only a single frequency to provide service to tens of thousands of customers over a very wide area, BETRS requires, due to co-channel interference considerations, numerous frequencies to provide service to a relatively small handful of subscribers over a limited service area. The record in this proceeding demonstrates that the typical BETRS application for authorization of a central office station at a single location typically requests assignment of two to four frequency pairs, and in some cases, ultimately 20 frequency pairs have been authorized. See Order at para. 34, n. 104. Due to the number of different frequencies that are required for a single BETRS central office station, it would be unreasonable for the Commission to expect rural telephone companies to bid on multiple-frequency spectrum in the EAs. Thus, the Commission's auction rules unfairly discriminate against telephone companies in rural America.

should give each rural telephone company the right to require, at no cost to itself, the market area licensee to partition those portions of its market that are required by the rural telephone company to provide BETRS service, would ensure the continued provision of universal telephone service to rural America. As NNTC demonstrated, without this right to partitioning, BETRS licensees would be forced to either: (i) expend vast resources at the paging auctions for numerous channels in the market area, which is not practicable, or (ii) be at the mercy of the auction winners for the future use of two-way spectrum in the rural areas. Either way, the future provision of BETRS service will be undermined because acquiring multiple frequencies at auction will be cost prohibitive, or because the market area licensees will have attempted to exact exorbitant prices for partitioning, in order to recover as much of their auction costs as possible.³

³ In this regard, the evidence of record does not support the Commission's supposition that geographic area licenses would be willing to enter into voluntary partitions with rural telephone companies for the provision of BETRS service. Without favorable rules from the Commission, Century expects such partitions to be costly. This is so, even though service benchmarks are based upon population and not land area. Taken in combination with the fact that most BETRS systems are multi-channel, the likelihood that a rural telephone company will be able to reach acceptable partition agreements with the affected geographic area licensees is slight, as demonstrated in the recent relocation of fixed microwave licensees from the 2 GHz band. In that proceeding, the Commission was ultimately forced to take action on behalf of the new PCS licensees because a number of the incumbent microwave licensees attempted to impose
(continued...)

The benefit of NNTC's proposal is that rural telephone companies will be able to make necessary modifications to existing BETRS systems, as well as establish new BETRS systems as subscriber demand warrants, with minimal impact on the geographic area licensee. This is so because the areas served by BETRS are sparsely populated and, due to their distance from urbanized areas and low population densities, are not typically served by paging carriers. Indeed, if a prospective BETRS subscriber is currently without telephone service, he or she is unlikely to be a good prospect for paging service; without the ability to respond to a page, this service is useless. And because BETRS stations are typically low-powered and highly directionalized, the potential for harmful interference to the geographic area licensee's paging system is remote. NNTC's proposal will preserve and advance the goal of universal telephone service to rural America without imposing an undue burden on the rights of the geographic area paging licensee. This is precisely the balancing act in which Congress expected the FCC to engage when it enacted

³ (...continued)

unreasonable demands as a condition of relocation. Nothing in the Commission's Order prevents the geographic area licensee from engaging in such behavior.

Section 309(j)(6)(E) of the Communications Act of 1934, as amended.⁴

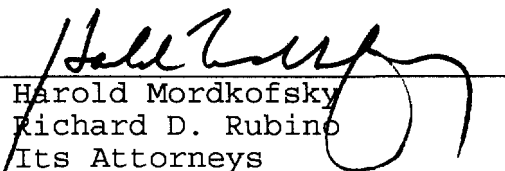
III. Conclusion.

In light of the foregoing, it is respectfully requested that the Commission require mandatory partitioning of rural areas to BETRS licensees, as proposed by NNTC.

Respectfully submitted,

**CENTURY TELEPHONE
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⁴ Of course, the geographic area licensee would not be expected to partition its area if there are pre-existing, protected co-channel stations in the area which could not be protected by the rural telephone company's BETRS station. As proposed by NNTC, any co-channel paging station, which is constructed after the rural telephone company files its written request to partition the geographic area license, would not be entitled to protection. Comments of NNTC at 6, n. 6. In order to afford adequate notice to the geographic area licensee, NNTC suggested that the Commission require that any such request be served on the geographic area licensee, by telecopier and U.S. mail, first-class postage prepaid. Id.

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Copies of the foregoing "Reply Comments of Century Telephone Enterprises, Inc." were deposited in the U.S. mail, postage prepaid, addressed to:

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